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MAILED

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OFFICE OF PETITIONS

In re Patent No. 6,537,940 :
Issue Date: March 25, 2003 :
Application No. 09/636,157 : **ON PETITION**
Filed: August 10, 2000 :
Attorney Docket No. MSRI2034US1 :

This is a decision on the petition under 37 CFR 1.377, filed April 14, 2011, to accept and record a maintenance fee for the above-identified patent.

The petition is **DISMISSED**.

The above-identified patent issued on March 25, 2003. Accordingly, the second maintenance fee could have been paid from March 25, 2010 to September 27, 2010 or with a surcharge from September 28, 2010 to March 25, 2011.

Petitioner indicates that a maintenance fee payment was timely paid, using a certificate of deposit dated on March 25, 2011. However, on April 6, 2011, a Notice of Non-Acceptance of Patent Maintenance Fee was mailed. Petitioner explains that, while the left top corner of the cover sheet and the memo line of the check included the correct patent number, the first paragraph of the letter transmitting the fee included an incorrect patent number. Petitioner request that the requisite maintenance fee and surcharge be applied to the correct patent number and that the present petition fee be refunded.

In submitting maintenance fees and any necessary surcharges, identification of the patents for which maintenance fees are being paid must include **the** patent number **and** an application number, see 37 CFR 1.366(c). Emphasis added.

A review of the record confirms that a maintenance fee, including a surcharge, was paid under 37 CFR 1.362(e) on April 1, 2011, using a Certificate of Mailing under 37 CFR 1.8 dated March 25, 2011. It is also acknowledged that the paper transmitting the fees noted two patent numbers thereon; however, the transmittal letter specifically stated the maintenance fee and surcharge were for "United States Patent 6458306." Since the maintenance fee for the identified patent had already been paid,

the payment for the \$1,240 maintenance fee and \$65 surcharge was not accepted and on April 6, 2011 \$1,305 was refunded to petitioner by electronic transfer.

Clearly the payment received on April 1, 2011, using a certificate of mailing dated March 25, 2011 failed to include the proper identification of the patent for which the payment was intended as required by 37 CFR 1.366. Accordingly, a petition, including the requisite petition fee, is required to correct petitioner's error and the petition fee will **not** be refunded.

Further, since the present communication does not include the previously refunded maintenance fee and surcharge or authorization to charge same, the petition cannot be granted at this time.

Any request for reconsideration must be filed within TWO MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include the previously refunded maintenance fee and surcharge and a cover letter entitled "Renewed Petition under 37 CFR 1.377."

Further correspondence with respect to this matter should be delivered through one of the following mediums:

By mail: Mail Stop PETITIONS
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By hand: Customer Service Window
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 Randolph Building
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By fax: (571) 273-8300
 ATTN: Office of Petitions

By Internet: EFS-Web¹

Any questions concerning this matter may be directed to the undersigned at (571) 272-3204.

/SDB/

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

¹ www.uspto.gov/ebs/efs_help.html (for help using EFS-Web call the Patent Electronic Business Center at (866) 217-9197)